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IN THE
COURT OF APPEALS OF INDIANA

JEREMY L. BREES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A02-0611-CR-1058
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Wayne J. Lennington, Judge
Cause No. 18C05-0511-FC-50

June 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Brees pleaded guilty to Attempted Forgery, a Class C felony, and the trial court sentenced him to the maximum four-year term allowed under his plea agreement. He now appeals his sentence, and we restate his issue as follows:

1. Whether the trial court erred in imposing the advisory sentence, which was the maximum allowed by Brees' plea agreement.

2. Whether his sentence is inappropriate in light of the nature of his offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

While released on bond related to felony charges, Brees attempted to purchase a printer at Office Max with a stolen credit card on October 20, 2005. The State charged him with: Forgery, a Class C felony; Fraud, a Class D felony; and Receiving Stolen Property, as a Class D felony. Brees entered into a written plea agreement with the State that required him to plead guilty to attempted forgery, a Class C felony, in exchange for the dismissal of the other charges and a maximum executed sentence of four years.

The trial court accepted the agreement and, after hearing evidence and argument, sentenced Brees to a four-year executed term, stating:

> Based upon the recommendation of the probation officer, and the facts which have been brought out here—you have been charged with fourteen felonies. You have made no effort, you have made no indication that you're going to change. In fact, you're getting worse all the time, and that's just beyond the scope of anything that I can accept that to be anything but aggravating circumstances. You've had two misdemeanor counts that you were convicted [sic]. This is the third felony that you've been convicted [sic]. I don't see any mitigating circumstances here which would alleviate, or even challenge the aggravating circumstances of your past criminal history. You've been out on bond. That didn't stop you. You

> were out on bond on two counts and you've done all of this. I cannot accept that. Does the fact that you're pleading to this have any mitigating circumstance to it? Of course not. You're getting a cap of four years to a "C" felony, which could have been as much as eight years. You made a good deal. It will be the judgment of this Court that you be sentenced to the Indiana Department of Correction for a period of four years from this date to run consecutive to the other charges that you've already plead to [sic].

Transcript at 31. This appeal ensued.

Issue One: Imposition of Sentence

We note initially that the standard of reviewing a sentence imposed under the advisory sentencing scheme, when the trial court has identified an aggravating factor, is far from clear. As this court recently noted:

> [The] after-effects [of Blakely v. Washington, 542 U.S. 296 (2004),] are still felt because the new [advisory sentencing] statutes raise a new set of questions as to the respective roles of trial and appellate courts in sentencing, the necessity of a trial court continuing to issue sentencing statements, and appellate review of a trial court's finding of aggravators and mitigators under a scheme where the trial court does not have to find aggravators or mitigators to impose any sentence within the statutory range for an offense, including the maximum sentence. The continued validity or relevance of well-established case law developed under the old "presumptive" sentencing scheme is unclear.
>
> We attempted to address these questions in Anglemyer v. State, 845 N.E.2d 1087 (Ind. Ct. App. 2006), trans. granted. We observed that under the current version of Indiana Code Section 35-38-1-7.1(d), trial courts may impose any sentence that is statutorily and constitutionally permissible "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." [Anglemyer, 845 N.E.2d] at 1090. We also noted, however, that Indiana Code Section 35-38-1-3(3) still requires "a statement of the court's reasons for selecting the sentence that it imposes" if a trial court finds aggravating or mitigating circumstances. Id. In attempting to reconcile this language, we concluded that any possible error in a trial court's sentencing statement under the new "advisory" sentencing scheme necessarily would be harmless. Id. at 1091. Therefore, we declined to review Anglemyer's challenges to the correctness of the trial court's sentencing statement. Id. Nevertheless, we stated, "oftentimes a

> detailed sentencing statement provides us with a great deal of insight regarding the nature of the offense and the character of the offender from the trial court judge who crafted a particular sentence" and encouraged trial courts to continue issuing detailed sentencing statements to aid in our review of sentences under Indiana Appellate Rule 7(B). Id.
>
> Our attempt in Anglemyer to analyze how appellate review of sentences imposed under the "advisory" scheme should proceed was met with a swift grant of transfer by our supreme court. Until that court issues an opinion in Anglemyer, we will assume that it is necessary to assess the accuracy of a trial court's sentencing statement if, as here, the trial court issued one, according to the standards developed under the "presumptive" sentencing system, while keeping in mind that the trial court had "discretion" to impose any sentence within the statutory range for [the felony level of each conviction] "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." See Ind. Code § 35-38-1-7.1(d); see also Fuller v. State, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006) ("a sentencing court is under no obligation to find, consider, or weigh either aggravating or mitigating circumstances.")[, trans. denied]. We will assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed here was inappropriate. In other words, even if it would not have been possible for the trial court to have abused its discretion in sentencing [a defendant] because of any purported error in the sentencing statement, it is clear we still may exercise our authority under Article 7, Section 6 of the Indiana Constitution and Indiana Appellate Rule 7(B) to revise a sentence we conclude is inappropriate in light of the nature of the offense and the character of the offender. See Childress v. State, 848 N.E.2d 1073, 1079-80 (Ind. 2006); see also Buchanan v. State, 767 N.E.2d 967, 972 (Ind. 2002) (holding that Indiana Constitution permits independent appellate review and revision of a sentence even if trial court "acted within its lawful discretion in determining a sentence").
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> In reviewing a sentencing statement, "we are not limited to the written sentencing statement but may consider the trial court's comments in the transcript of the sentencing proceedings." Corbett v. State, 764 N.E.2d 622, 631 (Ind. 2002).

Gibson v. State, 856 N.E.2d 142, 146-47 (Ind. Ct. App. 2006). Lacking further guidance to date from our supreme court on the standard of review to be applied, we apply the standard described above in Gibson.

In this case, the trial court rejected Brees' proffered mitigators and identified two aggravating circumstances, namely, his criminal history and the fact that he was out on bond when he committed this offense. The court then imposed the maximum sentence allowed under the plea agreement. On appeal, Brees first argues that the court improperly considered his arrest record. "A record of arrest, without more, does not establish the historical fact that a defendant committed a criminal offense and may not be properly considered as evidence of criminal history." Barber v. State, 863 N.E.2d 1199, 1207 (Ind. Ct. App. 2007) (quoting Cotto v. State, 829 N.E.2d 520, 526 (Ind. 2005)). A particularly lengthy arrest record, however, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State and could indicate to the court that the defendant is likely to commit another crime. Id.

Here, the trial court properly connected Brees' arrest record to his inability to control his criminal behavior after having been subject to police authority. Moreover, the court did not find that Brees' arrest record standing alone was an aggravating circumstance. Rather, the court noted that Brees had two prior misdemeanor convictions and three prior felony convictions and found his criminal history to be an aggravating circumstance. The court also found the fact that Brees was released on bond when he committed this offense to be an aggravating circumstance. These are valid aggravators that support the imposition of the advisory sentence. See Field v. State, 843 N.E.2d 1008, 1012 (Ind. Ct. App. 2006), trans. denied.

Brees also argues that the court did not give adequate weight to his proffered mitigators. A sentencing court, however, is not required to agree with the defendant

about the value given to proffered mitigating facts, and it is under no obligation to find mitigating factors at all. Sipple v. State, 788 N.E.2d 473, 480 (Ind. Ct. App. 2003) (citing Echols v. State, 722 N.E.2d 805, 808 (Ind. 2000)). Here, the trial court expressly rejected Brees' proffered mitigating circumstances, including his decision to plead guilty. The court did not err when it found no mitigating circumstances and two aggravating circumstances and imposed the maximum sentence under Brees' plea agreement.

Issue Two: Whether Sentence is Inappropriate in Light of Offense and Character

Brees also argues that his sentence is inappropriate because the trial court did not correctly consider his proffered mitigators. Under Indiana Appellate Rule 7(B), we may revise a sentence authorized by statute if, after considering the trial court's decision, we find that the sentence imposed is inappropriate in light of the nature of the offense and the character of the offender. In this review, however, we recognize the special expertise of the trial court in making sentencing decisions and do not merely substitute our opinion for that of the trial court. Davis v. State, 851 N.E.2d 1264, 1267 (Ind. Ct. App. 2006).

As noted above, the trial court considered and specifically rejected Brees' proffered mitigators. And we cannot say that Brees' four-year sentence for his third felony conviction in less than two years committed while he was released on bond is inappropriate in light of the nature of his offense and his character.

Affirmed.

RILEY, J., and BARNES, J., concur.